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presence of such obstruction on its right of way in time to have removed it before the plaintiff was injured. *Baxter v. Chicago, R. I. & P. Ry. Co.*, 87 Ia. 488. But the negligence of the defendant is not the proximate cause and in no way contributed to the accident, but was merely concurrent with it. *Selleck v. Lake Shore, etc., Ry. Co.*, 58 Mich. 195; *Bosko v. Delaware, L. & W. R. Co.*, 36 N. Y. Supp. 261.

RAILROADS—DUTY TO LOOK AND LISTEN—SIGNAL FROM FLAGMAN.—UNION PACIFIC R. CO. v. ROSEWATER, 157 FED. 168.—*Held*, that the placing of gates or the stationing of flagmen at railroad crossings in a city is not a duty imposed by statute or municipal ordinance on railroad companies, or voluntarily assumed by them, for the purpose of relieving the traveler on the street from taking those precautions for his own safety required by the long-settled rule of law, but as an additional precaution to meet the increased peril resulting from local conditions in cities; and open gates, or a signal from a flagman to cross, does not relieve a traveler from the duty to look and listen before entering upon the tracks.

A failure to stop, look, and listen before crossing an unguarded railway track is evidence of negligence. *Schofield v. Chicago, etc., Ry. Co.*, 114 U. S. 615. And according to the Pennsylvania rule it is negligence *per se* which will bar recovery, unless it affirmatively appears that it did not approximately contribute to the injury. *Penna. R. Co. v. Beale*, 73 Pa. St. 504; *Philadelphia, etc., R. Co. v. Hogeland*, 66 Md. 149. But where the guard stationed at the crossing directs the traveler to cross, in no jurisdiction is the failure to stop, look, and listen, negligence as a matter of law. It is a question of fact for the jury. *Conaty v. New York, etc., R. Co.*, 164 Mass. 572; *Kane v. Railroad*, 132 N. Y. 160. And in Ohio the Supreme Court of the State has taken a more emphatic position by declaring that an open gate, with the gateman in charge, is notice of a clear track and safe crossing; and it is not negligence to pass upon the tracks without stopping to listen. *Railroad v. Schneider*, 45 Ohio St. 678.

TORT—NEGLIGENCE—LIABILITY—INTEREST IN PLACE.—HOLLIS v. KANSAS CITY MO. RETAIL MERCHANT'S ASS'N ET AL., 103 S. W. (Mo.) 32. Where an association gave a street fair in which an amusement company furnished their appliances for amusements, including gondolas, similar to a merry-go-round, under a contract by which the fees for riding on the gondolas collected by the company were divided between the association and the company, and where the association had general charge of all the grounds and took an active part in distributing advertisements of the amusements, *held*, that the association, as well as the company, was liable for an injury to one who was riding on the gondolas, caused by negligence in the construction, operation and management thereof.

The duty which is incident to the ownership of premises imposes an obligation not only that the proprietor shall not so use them, or create such conditions thereon that danger to others will result, but that he shall not permit third persons so to use them as to create such conditions thereon. *Boston Beef Packing Co. v. Stevens*, 12 Fed. 279; *Bohier v. Dienhart Harness Co.*, 19 Ind. App. 489; *Kelly v. Cohoes Knitting Co.*, 8 N. Y. App. Div. 156. Where a person owes a duty with reference to the safety of premises, structures, or appliances, he cannot excuse himself from performance by showing